WP(C) 3982/2007
BEFORE
HON'BLE MR. JUSTICE B.K. SHARMA

I have heard Mr. K.D. Chetri, learned counsel for the petitioner as well as Mr. T.J. Mahanta, learned counsel for the respondent No. 4. I have also heard Ms. R. Chakraborty, learned State Counsel, for the official respondents.

By means of this writ petition, the petitioner has questioned the legality and validity of the Annexure-D order dated 31.7.2007, by which the Patacharkuchi Pashu Bazar has been settled with the respondent No. 4 for the period 2007-08 at the highest bid value of Rs.9,01,001.00. Be it stated here that the respondent No. 4 in his bid document did not quote any rate and the column pertaining to the same remained blank. The settlement has been made with him at the highest bid value, which was offered by one Shri Bhubaneswar Madahi.

As against the aforesaid position of the respondent No. 4, the petitioner was the 5th highest bidder at Rs. 2,80,404/-. It is on record that the first 4 bidders withdrew from the fray. While the 1st bidder namely Shri Bhubaneswar Modahi, inspite of the offer being made did not respond to the same, the other three highest bidders withdrew from the fray beforehand. Thus, the petitioner remained in the fray as highest bidder.

Shri Bhubaneswar Modahi was notified that in case of his failure to accept the offer of settlement of the market, same would automatically entail cancellation of the settlement, and that the Bazar would be settled with other intending bidders at the highest bid. The aforesaid intimation was given to Shri Modahi by Annexure-2 notice dated 2.2.2007 annexed to the Misc. Case No. 3228/2007. It is the case of the respondent No. 4 that since the aforesaid notice dated 2.2.2007 was brought to the notice of all the tenderers, they were aware that upon failure of Shri Modahi to accept the offer, same would be settled with other interested.

I have considered the submissions made on behalf of the learned counsel for the parties. I have also gone through the records. The first question for consideration is as to whether the respondent No. 4 can be said to be a valid tenderer. In the tender paper, he did not quote any rate. This aspect of the matter has been mentioned in the minutes of the tender committee. Thus, the tender of the respondent No. 4 is not valid in the eye of law and ought to have rejected. However, instead of rejecting the tender of the respondent No. 4, he has been settled with the market at the highest bid value offered by Shri Modahi. While doing so, the petitioner, who remained in the fray as the highest bidder was not asked for any option as to whether he would accept the settlement at the highest bid value.

Mr. Mahanta, learned counsel for the respondent No. 4 referring to the aforesaid notice dated 2.2.2007 submits that the same having been seen by the petitioner and the other tenderers, it was within the knowledge of the petitioner that in case of non-acceptance of the settlement of the market by the highest bidder, it would be settled with other intending tenderers. This submission of Mr. Mahanta cannot be accepted. Firstly, the tender submitted by the respondent No. 4 was totally invalid and secondly no intimation was sent to the bidders regarding consideration of settlement of the market in view of non-acceptance of the same by the highest bidder. Aforesaid letter dated 2.2.2007 cannot be said to the final notice. Due notice ought to have been given to the intending tenderers enabling them to exercise their option towards acceptance of the settlement with the highest bid value. Admittedly, this was not done.

In view of the above, I have no hesitation to set aside the impugned order dated 31.7.2007 (Annexure-D). The matter shall now go back to the respondent authority for fresh consideration in accordance with law. The money deposited by the respondent No. 4 shall be refunded to him in accordance with law.

Writ petition is allowed.